



# Michael L. Brookshire & Associates

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VIA FACSIMILE

## M E M O R A N D U M

TO: Stan Smith

FROM: Michael L. Brookshire *MLB/lsk*

SUBJECT: Atlanta NAFE Meeting and Dr. Viscusi's Comments

DATE: May 6, 1992

At the Annual Meeting of the National Association of Forensic Economists in Atlanta in December, 1989 one of the three section meetings was devoted to the loss of enjoyment of life damages. The four panelists presenting papers included Kip Viscusi, Ted Miller, Bill Dickens and Stan Smith. A compendium of these was published in the Fall, 1990 issue of the Journal of Forensic Economics.

In the paper handed out at the meeting, and in his presentation, Viscusi maintained that whole life costs, in the dimension of \$5,000,000 should be used as the basis for valuing life. Smith presented loss of enjoyment of life figures netting out lost earnings, amounting to approximately 2.3 million dollars for a statistically average person. Miller and Dickens also made presentations. A general discussion by the panelists followed.

Viscusi maintained that he believed these estimates of the value of life should be used only in product liability cases. When pressed by Smith as to what figures Viscusi would provide to a jury if and when a jury was allowed to award for the value of life in non-product cases, Viscusi replied: "Well then I would provide your figures, Stan."

MLB/lsk

AFFIDAVIT

This is to certify that I am currently a Vice President of the National Association of Forensic Economists (NAFE) and national co-chair for the next, annual meetings of that group in conjunction with the American Economic Association. The following are facts and opinions related to the proper calculation of lost enjoyment of life (hedonic) damages and the methods used by Professor Stan Smith:

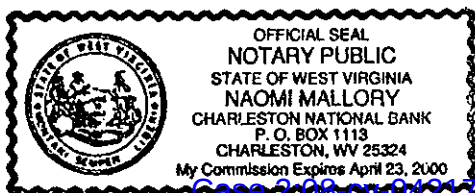
- 1.) Stan Smith and I outlined the methodology of hedonic calculations in the book Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys. (Cincinnati: Anderson, 1990) and in the article "Hedonic Damages and Personal Injury--A Conceptual Approach," Journal of Forensic Economics (December 1989).
- 2.) While no one has surveyed the 600 or so members of NAFE to determine opinions and methods regarding hedonic calculations, it is my personal knowledge that many colleagues in NAFE, including other national officers of this group, use the general methodology developed by Stan Smith and me.
- 3.) I have testified using this methodology on several occasions during the last few years. These testimonies have been in federal and/or state courts of West Virginia, Ohio, Tennessee, and South Carolina.



Michael L. Brookshire, Ph.D.  
Professor of Economics  
University of West Virginia

May 16, 1991  
Date

Sworn and subscribed by Michael L. Brookshire  
before me a Notary Public in and for the County of  
Kanawha, State of West Virginia, this 16th day of  
May, 1991.  
Naomi Mallory  
Notary Public





## MEMORANDUM

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**TO:** File

**FROM:** Stan V. Smith

**RE:** Attached Deposition Testimony by Dr. Kip Viscusi

Dr. Viscusi, now a professor at Harvard, is one of the most prolific researchers on the value of life.

He has testified for both plaintiff and defense firms regarding the value of life. In this deposition, for the plaintiffs, on page 15 he states the the victims total value of life is \$5.06 million. On the bottom of page 44 he states unequivocally that "No question, these are correct numbers."

There is no other economist who has a better reputation regarding value of life research.

• Page 53 -

Stan V. Smith  
Corporate Financial Group Ltd  
1165 N. Clark Street, Ste 650  
Chicago, IL 60610  
PLEASE COPY / RETURN ORIGINAL

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

BRENDA L. HUNCOVSKY, )  
et al., )  
Plaintiffs, )  
vs. ) CAUSE NO. 568478  
Team B )  
THE GATES RUBBER COMPANY, )  
et al., )  
Defendants. )

DEPOSITION OF WITNESS WILLIAM KIP VISCUSI  
Taken on behalf of the Defendant Gates Rubber

July 24, 1990

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IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

BRENDA L. HUNCOVSKY, et al., )  
Plaintiffs, )  
vs. ) NO. 568478  
Team B )  
THE GATES RUBBER COMPANY, )  
et al., )  
Defendants. )

Telephone deposition of William Kip  
Viscusi, taken on behalf of the Defendant Gates  
Rubber Company, at the law offices of The Hullverson  
Law Firm, 1010 Market, in the City of St. Louis,  
State of Missouri, on the 24th day of July, 1990,  
before Sandra K. LaRose, Certified Shorthand  
Reporter and Notary Public.

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Appearances of Counsel:

For The Plaintiff:

The Hulliverson Law Firm  
1010 Market Street, Suite 1550  
St. Louis, MO 63101  
By: Richard R. Kordenbrock, Esq.

For The Defendant Gates Rubber Co.:

Evans & Dixon  
1125 Grand, Suite 1710  
Kansas City, MO 64106  
By: Robert P. Numrich, Esq.

For The Defendant Lester Engineering:

Brown, James & Rabbitt  
705 Olive Street  
St. Louis, MO 63101  
By: Michael J. Lach, Esq.

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WILLIAM KIP VISCUSI.

of lawful age, having been first duly sworn to  
testify the truth, the whole truth, and nothing but  
the truth, deposes and says on behalf of the  
Defendant Gates Rubber Company, as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. NUMRICH:

Q Would you state your name, please.

A I go by W. Kip Viscusi. The W stands for  
William.

Q And what is your present residence address?

A 100 Spicewood Place, Chapel Hill, North  
Carolina.

Q How long have you lived at that address?

A About a year and a half.

Q Have you ever lived in the St. Louis area?

A Chicago is all of the St. Louis area,  
that's the closest I have been.

Q Have you ever worked in the St. Louis area,  
other than being hired as a consultant to testify?

A I have done work for Anheuser-Busch, but  
that did not involve testimony.

Q Was that -- what type of work did that  
involve, Professor?

A That was advising them about hazard warning

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1 labels for alcoholic beverages.

2 Q Outside of that employment by

3 Anheuser-Busch, have you been employed otherwise in  
4 the St. Louis area?

5 A Other than testifying in court cases and  
6 preparing analogies for court cases, no.

7 Q What is your title?

8 A Professor of Economics.

9 Q Where?

10 A At Duke University.

11 Q That's located in Durham, North Carolina?

12 A Correct.

13 Q Is that a full-time position?

14 A Yes, it is.

15 Q Approximately how many hours a week do you  
16 spend as a professor of economics at Duke  
17 University?

18 A Hard to count, since this is what I do.

19 Essentially, both weekends, nights and whatever, I'm  
20 generally in my office, excluding lunch hours and so  
21 on, I'll be in my office forty-five hours a week,  
22 and I also work at home and in the evenings, so it's  
23 more than a forty hour a week job, I'm not paid by  
24 the hour.

25 Q Do you teach at Duke University?

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Huncovsky?

A I don't recall the exact date, I assume  
that it was sometime before that first letter --

Q Do you recall --

A -- I received.

Q Do you recall how long before that first  
letter?

A No, I do not.

Q That first letter, as I understand it,  
would be April 9th of 1990, is that right?

A That's correct. And the letter refers to a  
recent telephone conversation, so, I assume it was  
shortly before that I was contacted.

Q Nothing else in your file to indicate the  
date?

A That's correct. So, I don't have any phone  
notes from the original conversation that I kept or  
even made. I don't think I was given much of a  
description.

Q What were you asked to do with regard to  
the information provided to you on Jason Huncovsky?

A I was asked to calculate the value of his  
economic loss, including the economic value of pain  
and suffering.

Q Anything else?

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1 have been made on your updated bibliography, at this  
2 time, so we can talk about them, if there is  
3 anything of significance on that update.

4 A All right.

5 Q I'll mark the curriculum vitae and the  
6 bibliography dated 2-14-89 as Exhibit No. 2.

7 A All right.

8 (WHEREUPON, THE REPORTER DULY MARKED FOR  
9 IDENTIFICATION DEFENDANT'S EXHIBIT NOS. 1  
10 AND 2.)

11 Q (By Mr. Numrich) I believe you just  
12 testified that the calculation for Jason Huncovsky's  
13 loss due to pain and suffering was not included on  
14 Exhibit 1, is that right?

15 A That's correct.

16 Q Do you have a separate calculation of that  
17 number?

18 A I have a calculation, as well as a general  
19 methodology the jury might use to think about this  
20 issue.

21 Q First of all, what is that number?

22 A I have several numbers, depending on what  
23 we are trying to capture. I have reference points,  
24 specific estimates of pain and suffering. Do you  
25 want me to go through the whole set?

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Q I would appreciate it if you would.

A Well, the first estimate is the estimated  
value of life, and this includes not only pain and  
suffering, but a lost value of enjoyment of life as  
well as loss of earnings, this figure would assume  
all the losses. This number is 5.06 million

dollars. The second statistic I have is a reference  
point value just to get at the pain and suffering  
component, and although I don't know the exact pain  
and suffering estimate for fatal burn injury, I have  
a methodology I developed in the use of the  
Environmental Protection Agency, an estimate of the  
value to individuals of the pain and suffering and  
non-monetary losses due to chronic bronchitis, which  
I think most people would agree is less painful than  
being burned to death, that loss is four hundred and  
fifty-seven thousand dollars. The third reference  
point I have developed is an estimate of the actual  
pain and suffering amounts that people receive for  
fatal burn injuries, and I have calculated this  
using a sample of over ten thousand product  
liability claims, and this includes claims settled  
out of court as well as court verdicts, so, it tends  
to be downward biased, my estimate of pain and  
suffering using these data was a number of a hundred

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1 Q Move on to number one, your estimated value.  
2 of life or lost value of enjoyment of life, and you  
3 gave me a figure of 5.06 million dollars, is that  
4 correct?

5 A That's right.

6 Q Can you give me the basis of that  
7 calculation?

8 A Yes, I can.

9 Q Would you please do so?

10 A Okay. I have obtained estimates of the  
11 value of life in a number of studies and the most  
12 recent estimates of the value of life using the  
13 newly developed data on death risks put together by  
14 the National Institute for Occupational Safety and  
15 Health indicate that the value that workers receive  
16 reaching statistical death is 5.2 million dollars.

17 That's their rate of trade-off, in terms of how much  
18 compensation we have to provide workers to accept a  
19 risk of death. I have adjusted this 5.2 million  
20 dollars to reflect the difference in the earnings of  
21 the workers in my sample which was seven dollars and  
22 seventy-one cents per hour as opposed to the earning  
23 level of Mr. Huncovsky of six dollars and fifty  
24 cents per hour. And using my estimates from the  
25 article in the American Economic Review that I

referred to, it's article number eighty-seven, I  
have adjusted the value of life numbers to reflect  
the differing income levels and I come up with a  
figure of 5.06 million dollars.

Q The methodology for the OSHA article you  
have just identified -- by the way, is that article  
in your bibliography, or is that an article that was  
published by someone other than you?

A That's published in actually two places,  
it's our book, Compensation Mechanisms for Job  
Risks, published by Princeton University Press.

Q That is number what?

A On mine, Compensation Mechanisms for Job  
Risks is number seven. It's the book with Michael  
Moore, Michael J. Moore.

Q Okay.

A So, it's included in that book, as are a  
number of our other studies. And it's also  
published in the Journal of Policy Analysis and  
Management in 1982. And on my vita, it's number  
sixty-four, and it may be number sixty-one on yours.

Q Does that article which is included in your  
books set out the methodology of how that number was  
arrived at?

A Yes, it does. Although, it does build on

1 my earlier work, but, yes, it does.

2 Q Then the only additional calculation you  
3 made was to reduce that by a computation of the  
4 difference between the seven-seventy-one and the  
5 actual six-fifty an hour that Mr. Huncovsky was  
6 making?

7 A Right. And this is -- well, these numbers  
8 are being prepared as examples of how I would  
9 approach the issue. This is not a -- what we are  
10 dealing with here is not a formal report, this is  
11 just a letter to Mr. Kordenbrock. So, when you  
12 think of these numbers, there are several numbers in  
13 the literature, so, even in that article, we have a  
14 value of life range, so, there is six million dollar  
15 numbers, seven million dollar numbers. This is this  
16 range of estimates in the value of life so that I'm  
17 talking about this as being an estimate of the value  
18 of life, in terms of my best estimate as opposed to  
19 being a unique number.

20 Q Again, is that the number that you would  
21 theoretically have to pay somebody?

22 A To die?

23 Q Yes.

24 A No. This is the number you -- if you had  
25 ten thousand people and you told them one of them

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1 was going to die, this is the total amount of  
2 compensation you would have to pay this group to  
3 incur one death among them. This type of process  
4 didn't incur explicitly, nobody goes around with  
5 auctions such as this, but we have implicit  
6 contracts with this. In the context of hazardous  
7 jobs, one chance in ten thousand that a typical blue  
8 collar worker will be killed on his job. And to get  
9 these workers to face the risk, on the average, we  
10 have to pay them five hundred dollars more. So,  
11 that's where the numbers come from.

12 Q You multiply the five hundred by the ten  
13 thousand to get the five million?

14 A In my story I told you, yes. In the paper,  
15 we do it a little differently. That's essentially  
16 the whole idea behind the calculation.

17 Q And that methodology is set out in that  
18 article which is contained in your book, in the OSHA  
19 article?

20 A I would read my Risk by Choice book to  
21 understand the methodology.

22 Q Is there anything else about the reference  
23 point number one, the lost value of enjoyment of  
24 life that we haven't talked about?

25 A Well, the one thing is that this number

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1 provides an estimate also of the appropriate  
2 deterrence value that a court would have to set in  
3 order to establish an appropriate incentive for a  
4 firm to avoid exposing its workers to the risk of  
5 injury, so that if the court were wondering what  
6 value do we have to award in terms of compensation,  
7 to send the correct economic signals to the firm  
8 that they should improve safety, this number is  
9 exactly the answer.

10 Q When you say this is a number the court  
11 should use, do you know any court that has utilized  
12 this formula?

13 A This is the number that any social  
14 institution could use. It doesn't have to be the  
15 courts, it could be worker's compensation, could be  
16 a government agency, anybody wanting to establish  
17 incentives for safety, correct incentives for  
18 safety, these are the numbers. Institutions have  
19 used these, these numbers are used throughout the  
20 Federal government, they are used by the Office of  
21 Management and Budget, by OSHA, by EPA, by the  
22 Consumer Product Safety Commission. They are the  
23 bases that the government uses in determining how to  
24 set the stringency of risk in the context of  
25 establishing incentives for safety. No question, !

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these are correct numbers.

Q Whether or not they are the correct  
numbers, the numbers that are used, I wouldn't  
characterize them as correct, that's your  
characterization, these are the numbers that are  
used by the Federal government?

A They are the numbers used by the Federal  
government.

Q Anything else with regard to that first  
reference point?

A Not that I can think of.

Q Professor, just for a matter of  
housecleaning --

MR. NUMRICH: Here, Rick, when you receive  
the updated CV of Professor Viscusi, why don't we  
attach that to Exhibit No. 2 as the total exhibit.

MR. KORDENBROCK: That's fine.

MR. NUMRICH: Because I have written -- I  
didn't have some of the numbers, I have written them  
on this exhibit, I rather have the numbers as he has  
referred to them in his testimony.

MR. KORDENBROCK: Okay.

Q (By Mr. Numrich) Did you hear that,  
Professor?

A Yes, I did.

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1           A    More or less. I know I have testified in  
2 court at least several times. This covers a long  
3 period of time, we are looking at activity from '85  
4 through '90. And eventually, all these activities,  
5 they don't last that long, it's a couple of hours,  
6 they become a blur, so, I don't keep an exact tally.

7           Q    I'm asking you for your best judgment, at  
8 this point in time?

9           A    Okay.

10          Q    You testified in court maybe five times and  
11 by deposition maybe ten times for the Hullverson Law  
12 Firm, is that right?

13          A    I would say those are probably floors  
14 rather than ceilings.

15          Q    There could be more, but that's your best  
16 estimate, at this point in time?

17          A    That's the general vicinity, ten, fifteen,  
18 maybe, for depositions.

19          Q    Do you advertise your services?

20          A    I have never advertised.

21          Q    And you don't know the names of the other  
22 law firms in St. Louis for whom you have worked on  
23 the plaintiff's side?

24          A    Oh, one of them just came -- Schlappizzi  
25 law firm.